



Billing Code 4333–15

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–R6–ES–2017–0044; FF06E11000–167–FXES11120600000]

Endangered and Threatened Wildlife and Plants; Permits; Draft Supplement to Environmental Impact Statement, Amendment to Habitat Conservation Plan for Forest Management in Montana, and Application for Amended Incidental Take Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: The Montana Department of Natural Resources and Conservation (DNRC) is amending its Forested Trust Lands Habitat Conservation Plan (2010 HCP) to incorporate the terms of a settlement agreement and add lands that it acquired since the U.S. Fish and Wildlife Service (Service) issued an incidental take permit (permit) to DNRC in December 2011. The Service is proposing to amend the associated permit under the Endangered Species Act (ESA) to authorize additional take of all but one of the species covered in the 2010 HCP resulting from addition of the acquired lands. We announce the availability of the following documents for review and comment by the public and Federal, Tribal, State, and local governments: Draft Supplemental Environmental Impact Statement (Draft SEIS) for amending the 2010 HCP and permit; Proposed Amended HCP Commitments for Additional Lands and Terms of the Settlement Agreement (Attachment A of the Draft SEIS); and Draft DNRC Assessment of Incidental Take for the Proposed Amended HCP (Attachment C of the Draft SEIS).

DATES: *Submitting comments:* Written comments must be submitted by **[INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: *Document availability:* The Draft SEIS, Proposed Amended HCP Commitments for Additional Lands and Terms of the Settlement Agreement (Attachment A of the Draft SEIS), and Draft DNRC Assessment of Incidental Take for the Proposed Amended HCP (Attachment C of the Draft SEIS) are available at:

- *Internet:* The Federal eRulemaking Portal (www.regulations.gov) in Docket No. FWS–R6–ES–2017–0044. Information regarding the Draft SEIS and accompanying documents is available in alternative formats upon request (see **FOR FURTHER INFORMATION CONTACT**).
- *In-person Review or Pick-up:* Documents will also be available for public inspection by appointment during normal business hours at the U.S. Fish and Wildlife Service, 780 Creston Hatchery Road, Kalispell, MT 59901 (telephone, 406–758–6882); U.S. Fish and Wildlife Service, 585 Shepard Way, Suite 1, Helena, MT 59601 (telephone, 406–449–5225); Montana DNRC Forest Management Bureau, 2705 Spurgin Rd, Missoula, MT 59804 (telephone, 406–542–4328).

Submitting comments: To request further information or send written comments, please use one of the following methods, and note that your information requests or comments are in reference to the proposed amended DNRC HCP. Please specify which documents your comment addresses: Draft SEIS, proposed amended HCP commitments, or proposed amendments to authorized take.

- *Internet:* Submit comments at [http:// www.regulations.gov](http://www.regulations.gov) in Docket No. FWS–R6–ES–2017–0044, or via the Montana DNRC website at <http://dnrc.mt.gov/divisions/trust/forest-management/hcp/hcp-announcements>.
- *U.S. Mail:* Public Comments Processing, Attn: Docket No. FWS–R6–ES–2017–0044; U.S. Fish and Wildlife Service Headquarters, MS: BPHC; 5275 Leesburg Pike, Falls Church, VA 22041–3803.

FOR FURTHER INFORMATION CONTACT: Ben Conard, Assistant Field Supervisor, Kalispell Field Office, via email at Ben_Conard@fws.gov or via telephone at 406–758–6882; or Gary Frank, Deputy Chief, Forest Management Bureau, Montana DNRC, via email at gfrank@mt.gov, or via telephone at 406–542 –4328. Information on this proposed action is also available at the DNRC’s website at <http://dnrc.mt.gov/divisions/trust/forest-management/hcp>. If you use a telecommunications device for the deaf, hard-of-hearing, or speech disabled, please call the Federal Relay Service at 800–877–8337.

SUPPLEMENTARY INFORMATION: We received an application from Montana DNRC for an amended incidental take permit to authorize additional incidental take of the grizzly bear, Canada lynx, bull trout, and westslope cutthroat trout. No changes in authorized take of the Columbia redband trout, covered by the original permit, is

necessary because it does not occur on the lands proposed to be added to the HCP. The additional take would result from implementing the DNRC forest management program on the 81,416 acres proposed to be added to the HCP. The DNRC is also proposing to amend the HCP to incorporate the terms of a settlement agreement to add conservation measures and remove others. As part of its application, the DNRC prepared a draft amendment to the HCP detailing specific changes to the 2010 HCP commitments to incorporate the terms of the settlement agreement.

In the Draft SEIS, we analyze potential effects to the covered species and other factors of the human environment from implementing the proposed amended HCP with issuance of an amended permit and from implementing the no-action alternative.

Background

Section 9 of the ESA prohibits take of fish and wildlife species listed as endangered (16 U.S.C. 1538). Under section 3 of the ESA, the term “take” means to “harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct” (16 U.S.C. 1532(19)). The term “harm” is defined in title 50 of the Code of Federal Regulations as “an act which actually kills or injures wildlife. Such acts may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering” (50 CFR 17.3). The term “harass” is defined in the regulations as “an intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding, or sheltering” (50 CFR 17.3).

Under section 4(d) of the ESA, the Service may issue regulations pertaining to threatened species that are necessary for their conservation, and under section 10(a) of the ESA, the Service may issue permits to authorize incidental take of listed fish and wildlife species. “Incidental take” is defined by the ESA as take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity. Section 10(a)(1)(B) of the ESA contains provisions for issuing incidental take permits to non-Federal entities for the incidental take of endangered and threatened species, provided the following criteria are met:

- The taking will be incidental.
- The applicant will minimize and mitigate, to the maximum extent practicable, the impact of such taking.
- The applicant will develop an HCP and ensure that adequate funding for the plan will be provided.
- The taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild.
- The applicant will carry out any other measures that the Secretary of the Interior may require as being necessary or appropriate for the purposes of the HCP.

Regulations governing activities involving endangered species are at 50 CFR part 17, subpart C, and regulations governing activities involving threatened species are at 50 CFR part 17, subpart D.

The National Environmental Policy Act (NEPA; 42 U.S.C. 4321 et seq.) requires that Federal agencies conduct an environmental analysis of their proposed actions to determine whether the actions may significantly affect the human environment. Under

NEPA and its implementing regulations (40 CFR 1500 et seq.), Federal agencies must also compare effects of a reasonable range of alternatives to the proposed action. In these analyses, the Federal agency will identify potentially significant direct, indirect, and cumulative effects, as well as possible mitigation for any significant effects, on biological resources, land use, air quality, water resources, socioeconomics, environmental justice, cultural resources, and other environmental resources that could occur with the implementation of the proposed action and alternatives.

In April 2009, the DNRC applied for a permit for take of the grizzly bear, Canada lynx, bull trout, westslope cutthroat trout, and Columbia redband trout incidental to forest management activities. The grizzly bear, lynx, and bull trout are federally listed as threatened, while the westslope and Columbia redband trout are not listed under the ESA. Before deciding whether to issue the permit, we analyzed the potential effects of implementing the HCP and alternatives in a draft environmental impact statement (EIS). In 2009, we provided comment periods totaling 105 days for the public to review DNRC's permit application package, which included the draft HCP and draft EIS (74 FR 30617). After considering the public comments and determining that all requirements under section 10(a)(1)(B) of the ESA were met, the Service issued the permit to DNRC on December 14, 2011.

The original permit covers approximately 548,500 acres of forested State trust lands in western Montana. However, the HCP addressed the process and contingencies for DNRC to transfer, exchange, or add lands for their forest management activities in the future. Thus, the Service previously considered in the EIS the potential effects of amending the HCP and permit to cover such actions.

In April, 2013, Friends of the Wild Swan, Montana Environmental Information Center, and Natural Resources Defense Council challenged the issuance of the permit in a Federal District Court in Montana. The Court ruled in the Service's favor on all but one count. DNRC and the plaintiffs subsequently entered a settlement agreement for the remaining count in September, 2015. The future addition of lands to the HCP and permit were not part of the complaint or the settlement agreement.

Proposed Action

The Service proposes to issue an amended permit that authorizes additional incidental take of the covered species resulting from adding 81,416 acres to the area covered in the HCP. DNRC is amending its HCP so that its relevant conservation commitments to avoid, minimize, and mitigate the impacts of incidental take will be implemented on the new lands. The DNRC is also amending the HCP to incorporate the terms of the settlement agreement, which would not result in any changes to the permit.

The lands proposed to be added to the HCP are in the Swan, Chamberlain, Potomac, Lolo Land Exchange, Upper Blackfoot, and Southern Bitterroot acquisition areas. The draft amendment to the HCP adds (1) the Swan acquisition lands to the Swan Transportation Plan, (2) the Swan acquisition area to the Swan Lynx Management Area, and (3) portions of the Chamberlain and Potomac acquisition areas to the Garnet Lynx Management Area. It also revises the acres of lynx critical habitat addressed in the HCP.

The terms of the settlement agreement focus primarily on adjusting management of DNRC's Class A lands under the Stillwater Block Transportation Plan in the HCP, which entailed a strategy of a cycle of 4 years of active forest management, followed by 8 years of rest. The settlement agreement identifies 7 distinct grizzly bear security zones

almost entirely on the original 19,400 acres of Class A lands in the Stillwater Block in the HCP, but also adds 2,300 acres in a new area in Coal Creek State Forest. The amended HCP would replace the 4-year active/8-year rest rotation with specific measures for restricting forest management activities to the denning season in these grizzly bear security zones. All motorized activities below 6,300 feet in elevation within the grizzly security zones would be allowed during the grizzly denning season and prohibited all year round above that elevation. The current HCP prohibits new permanent road construction on the original 19,400 acres of Class A lands. This measure would remain essentially the same under an amendment, but to incorporate the terms of the settlement agreement, it would be specifically applied to the seven grizzly security zones, including the additional 2,300 acres in the Coal Creek State Forest. Several other measures in the HCP for Class A lands would remain the same but be extended to the grizzly security zones. Other amendments specifically spell out measures that DNRC had committed to implement in the original HCP but were previously incorporated by reference from DNRC's Forest Management Administrative Rules of Montana.

The original HCP requires the DNRC to complete corrective actions at sites identified with high risk of sediment delivery in bull trout watersheds in the HCP plan area by 2027. As directed by the settlement agreement, the HCP would be amended to prioritize and complete such corrective actions in federally designated bull trout critical habitat in the Stillwater Block by 2024.

Lastly, over the past 5 years of HCP implementation, the Service and DNRC identified some commitment and procedural clarifications that would be incorporated into the HCP. These amendments would serve to help DNRC understand how to implement

certain measures and would not entail any changes to the nature of the measures or how they affect the covered species.

Alternatives Analyzed in the Draft SEIS

The Draft SEIS considers the direct, indirect, and cumulative effects of the proposed action, including the proposed amended HCP's measures intended to avoid, minimize, and mitigate such impacts, and no-action alternatives. The proposed action entails issuing DNRC an amended permit authorizing additional take based on amendments to the HCP to add covered lands and incorporate terms of the settlement agreement. The no-action alternative would include amending the HCP to incorporate the terms of the settlement agreement, which is legally required, but would not include adding lands or issuing an amended permit authorizing additional take.

The Service invites comments and suggestions from interested parties on the content of the Draft SEIS. In particular, information and comments regarding the following topics are requested:

1. The direct, indirect, or cumulative effects that implementation of either action alternative could have on the natural and human environment.
2. Whether or not the impact on various aspects of the natural and human environment have been adequately analyzed.
3. Any other information pertinent to evaluating the effects of the proposed action on the natural and human environment.

Role of the Environmental Protection Agency in the EIS Process

The U.S. Environmental Protection Agency (EPA) is charged under section 309 of the Clean Air Act to review all Federal agencies' environmental impact statements

(EISs) and to comment on the adequacy and acceptability of the environmental impacts of proposed actions in the EISs.

EPA also administers the database for EISs prepared by Federal agencies and provides notice of their availability in the *Federal Register*. The EIS database provides information about EISs prepared by Federal agencies, as well as EPA's comments concerning the EISs. All EISs are filed with EPA, which publishes a notice of availability each Friday in the *Federal Register*.

For more information, see <http://www.epa.gov/compliance/nepa/eisdata.html>.

You may search for EPA comments on EISs, along with EISs themselves, at <https://cdxnodengn.epa.gov/cdx-enepa-public/action/eis/search>.

Public Comments

Written comments received become part of the public record associated with this action. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may request in your comment that we withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. We will not consider anonymous comments. All submissions from organizations or businesses and from individuals identifying themselves as representatives or officials of organizations or businesses will be made available for public disclosure in their entirety.

Authority

We provide this notice under section 10(c) of the ESA (16 U.S.C. 1531 et seq.) and its implementing regulations for incidental take permits (50 CFR 17.22) and NEPA (42 U.S.C. 4371 *et seq.*) and its implementing regulations (40 CFR 1506.6; 43 CFR part 46).

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